

WEDNESDAY, NOVEMBER 7, 2001

The Board met at its offices at 5901 Green Valley Circle, Culver City, at 9:00 a.m. with Chairman Parrish, Vice Chairman Chiang, Mr. Klehs and Mr. Andal present, Ms. Mandel present on behalf of Dr. Connell in accordance with Government Code Section 7.9.

SENIOR CITIZENS HOMEOWNER & RENTER ASSISTANCE HEARING

Earline Cowan, 112157

2000, \$263.50 Claim for Credit

For Appellant:

Earline Cowan

For Franchise Tax Board:

Jean Cramer, Supervising Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether respondent properly denied appellant's claim for property tax assistance.

Appellant's Exhibit:

Miscellaneous Documents (Exhibit 11.3)

Franchise Tax Board's Exhibit:

Miscellaneous Documents (Exhibit 11.4)

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the appeal be granted in the amount of \$68.00.

CORPORATE FRANCHISE AND INCOME TAXES HEARINGS

Pusadee Rungrangsi, 100535

1992, \$ 742.00 Assessments, \$148.40 Penalty

1993, \$4,116.00 Assessments, \$823.20 Penalty

1994, \$4,956.00 Assessments, \$991.20 Penalty

For Appellant:

Pusadee Rungrangsi

Srichai Rungrangsi

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellant should be granted innocent spouse relief.

Appellant's Exhibit:

Innocent Spouse Statement (Exhibit 11.5)

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that action of the Franchise Tax Board be sustained. The Board directed staff to assist Appellant in the Offer and Compromise program.

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Roger L. French, 127536
1994, \$9,846.00 Assessment
For Appellant:

Roger L. French
Darol Smith, Enrolled Agent
Mark McEvilly, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellant is entitled to exclude a settlement award from gross income on the basis that such award was received on account of personal injuries.

Appellant's Exhibit: Settlement Allocation (Exhibit 11.6)
Closing Trial Brief (Exhibit 11.7)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs not participating, the Board ordered that the appeal be submitted for decision, granting the Appellant and the Franchise Tax Board concurrently 30 days to submit additional documentation and the Appeals Section to bring the matter back before the Board on January 9, 2001, Sacramento Board meeting.

Carol L. Gillam, 94357
1993, \$ 2,232.00 Assessment
1994, \$ 935.00 Assessment
1995, \$26,766.00 Assessment
1996, \$ 5,335.00 Assessment

For Appellant:

Carol L. Gillam

For Franchise Tax Board:

Jean Cramer, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether appellant has shown that certain monthly payments credited to her from her former husband, which she never actually received, were not taxable alimony.

Whether appellant has shown that payments from her former husband's pension plan, which she never actually received, were not taxable to her.

Whether appellant has shown that she is entitled to deductions for mortgage interest with respect to her previous residence in which her former husband still resided.

Whether appellant has shown that the recapture rules of Internal Revenue Code section 71(f) provide a deduction that offsets respondent's assessments.

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Appellant's Exhibit: CA Resident Income Tax Return 1995
(Exhibit 11.8)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Andal and Ms. Mandel voting yes, Mr. Chiang and Mr. Klehs absent, the Board ordered that the appeal be granted.

Tustin Avenue Shopping Center, Ltd., 103212

1997, \$800.00 or more Claim for Refund

1998, \$800.00 or more Claim for Refund

1999, \$800.00 or more Claim for Refund

For Appellant: Sonja Grewal, Representative

For Franchise Tax Board: John Penfield, Tax Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether appellant is entitled to a refund of minimum partnership tax, penalties, and interest.

Appellant's Exhibit: Certificate of Dissolution (Exhibit 11.9)

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish and Mr. Andal voting yes, Ms. Mandel abstaining, Mr. Chiang and Mr. Klehs absent, the Board ordered that action of the Franchise Tax Board be modified.

Michael Napolitano, 77245

1993, \$2,712.00 Assessment

For Appellant: No Appearance

For Franchise Tax Board: Mark McEvilly, Tax Counsel

Action: The Board took no action.

Kenneth A. Sauer, 55007

1997, \$818.00 Assessment, \$469.50 Penalty

Eliza B. Sauer, 55771

1997, \$1,716.00 Assessment, \$1,337.00 Penalty

For Appellant: No Appearance

For Franchise Tax Board: Mark McEvilly, Tax Counsel

Action: Appellant conceded therefore the Board took no action.

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BUSINESS TAXES APPEALS HEARINGS

ASJ Wenger Corporation, SY EA 24-938379; 89000496790

7-1-93 to 6-30-96, \$30,412.51 Tax

For Petitioner:

John D. Wenger, President

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the evidence shows the audit method of calculating rental receipts from audited ex-tax purchases of rental merchandise results in an excessive measure of tax.

Whether revision of petitioner's recorded segregation of purchases between rental and retail merchandise is warranted.

Whether the estimated amounts of ex-tax purchases of rental merchandise prior to the audit period were established in accordance with the facts.

Action: Upon motion of Mr. Andal, seconded by Ms. Mandel and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered to reduce the disputed taxable measure by 50 percent otherwise redetermined as recommended by the Appeals Section.

NCI Successor, Inc., SR FH 99-957555; 89002447210, 89002447200

Zarcon Corporation, SR FH 25-829283; 89000578220

Advanced Coating Technology, Inc., SR FH 25-889763; 89000613020

1-1-91 to 3-31-94, \$ 16,234.30 Tax, \$5,373.43 Penalty, Failure to Timely Pay

For Petitioner:

Clinton Hubbard, Attorney

Oscar W. Ortiz, Controller

For Sales and Use Tax Department:

Jeffrey H. Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the assessment of use tax on ex-tax purchases of painting supplies and related items should be reversed, because these items were resold to the U.S. Government prior to use by petitioners, in fulfillment of subcontracts with the U.S. Navy.

Action: Upon motion of Mr. Klehs, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to submit additional documentation, the Department 30 days to review the documentation and the Appeals Section 30 days thereafter to bring the matter back to the Board with a final recommendation.

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Jurek Mariusz Pilek and Samantha Kate Beard-Pilek, SR EAA 97-248005; 17830

1-1-92 to 9-30-98, \$49,180.80 Tax, \$00.00 Penalty, Failure to File

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Action: The Board took no action.

Vasant Kale, SR EH 99-332647; 89002204350

10-1-94 to 12-31-97, \$25,304.64 Tax, \$00.00 Penalty, Negligence

For Petitioner: No Appearance

For Sales and Use Tax Department: Kevin Hanks, Hearing Representative

Action: The Board took no action.

The Board recessed at 10:35 a.m. and reconvened at 10:50 a.m. with Mr. Parrish, Mr. Klehs, Mr. Andal and Ms. Mandel present.

L. L. Murphy Company, Inc., SR EAA 99-659637; 89002348040, 61709

1-1-95 to 12-31-97, \$00.00 Tax

For Petitioner: Steven F. Schroeder, Attorney

Holly Emge, Attorney

Jack D. McRoberts

For Sales and Use Tax Department: Jeffrey Graybill, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Petitioner now concurs with the reaudit findings. However, petitioner responded to the Notice of Hearing that it will attend the Board Hearing as scheduled.

Whether petitioner was engaged in the business of rendering a service to its customers and that any tangible personal property transferred to its customers was incidental to the rendition of that service.

Whether, even if petitioner was in the business of making retail sales of custom made items, separately stated service charges for digitizing, grading and sizing are not taxable because the services are distinct from the marker.

Whether there were errors in the computation of the sampling performed by the Department.

Whether petitioner was entitled to a refund for excess tax reimbursement.

Action: Upon motion of Mr. Klehs, seconded by Mr. Andal and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

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Samir Mohamed Hashem, SR ARH 99-978227; 89741

10-18-96 to 5-21-99, \$1,745.37 Tax

For Petitioner:

Samir Mohamed Hashem

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issue: Whether the audited understatement of taxable sales was established in accordance with the facts.

Action: Upon motion of Mr. Chiang, seconded by Mr. Andal and duly carried, Mr. Parrish, Mr. Chiang, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs voting no, the Board ordered that the disputed taxable measure be reduced by 75 percent.

Miguel Lopez (Deceased) and Guadalupe Lopez, SX AA 14-722690; 89000119590

7-1-93 to 6-30-97, \$581,484.02 Tax, \$145,971.63 Penalty, Fraud

For Petitioner:

Ronald Hettena, Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner understated its taxable sales.

Whether Mrs. Guadalupe Lopez is entitled to relief from the tax liability pursuant to Revenue and Taxation Code section 6456.

Whether the evidence shows that petitioner should be allowed more than one percent for pilferage.

Whether relief from the fraud penalty is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Chiang and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Keum Nam Lee, SR AC 99-136750; 89002118220

9-1-92 to 9-30-97, \$55,662.06 Tax, \$13,915.69 Penalty, Fraud

Keum Nam Lee, SR EA 99-525236; 89002293130

6-1-94 to 9-30-97, \$32,878.56 Tax, \$8,219.72 Penalty, Fraud

Keum Nam Lee, SY AP 99-826979; 89002407670

11-28-95 to 9-30-97, \$22,349.72 Tax, \$5,587.47 Penalty, Fraud

For Petitioner:

Kenny H. Lee, CPA, Tax Representative

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the audited understatement of taxable sales is excessive.

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Whether relief from the penalties for fraud or intent to evade the tax is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang absent, the Board ordered that the fraud penalty be reduced to negligence otherwise redetermined as recommended by the Appeals Section.

Faramarz Bibayan, SR AC 13-849592; 37294

7-1-95 to 9-30-98, \$7,578.01 Tax

For Petitioner:

Faramarz Bibayan

For Sales and Use Tax Department:

Kevin Hanks, Hearing Representative

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether the audited understatement of taxable sales was established in accordance with the facts.

Whether relief from the interest charges is warranted.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition be redetermined with adjustments.

Alexander Surgical Supply Company Inc., SR AC 13-772217; 89000075640,

89000075650

4-1-94 to 3-31-97, \$99,798.64 Tax, \$00.00 Penalty

4-1-97 to 9-30-97, \$19,803.83 Tax, \$00.00 Penalty

For Petitioner:

No Appearance

For Sales and Use Tax Department:

Sharon Jarvis, Counsel

Contribution Disclosures pursuant to Government Code Section 15626: No contributions were disclosed.

Issues: Whether petitioner's sales of medicines to surgical centers qualify for exemption from sales tax pursuant to Revenue and Taxation Code section 6369, subdivision (a)(4).

Whether relief from the protested tax is warranted based on misinformation contained in a prior audit.

Whether relief from the tax is warranted on the basis that one (or more) of its competitors did not collect sales tax reimbursement on similar sales.

Action: Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Andal and Ms. Mandel voting yes, Mr. Klehs voting no, Mr. Chiang not participating, the Board ordered that the petition be redetermined in accordance with the revised recommended by the Appeals Section.

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FINAL ACTIONS ON PETITIONS HEARD NOVEMBER 7, 2001

Upon motion of Mr. Andal, seconded by Mr. Parrish and duly carried, Mr. Parrish, Mr. Chiang and Mr. Andal voting yes, Mr. Klehs and Ms. Mandel voting no, the Board ordered that the petition of *L. L. Murphy Company, Inc., SR EAA 99-659637; 89002348040, 61709*, redetermined with adjustments.

Upon motion of Mr. Andal, seconded by Mr. Klehs and unanimously carried, Mr. Parrish, Mr. Chiang, Mr. Klehs, Mr. Andal and Ms. Mandel voting yes, the Board ordered that the petition of *Miguel Lopez (Deceased) and Guadalupe Lopez, SX AA 14-722690; 89000119590*, be redetermined as recommended by the Appeals Section.

Mr. Klehs stated for the recorded that he would have voted with the majority in the matters of *Carol L. Gillam, 94357* and *Tustin Avenue Shopping Center, Ltd., 103212*.

The Board adjourned at 12:30 p. m.

The foregoing minutes are adopted by the Board on December 20, 2001.

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